

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV LLC			
	DEFENDANT(S) INVOLVED IN SETTLEMENT Mixed Chicks			
CASE INFO	COURT DOCKET NUMBER JCCP004765		COURT NAME Alameda County Superior Court	
	SHORT CASE NAME Proposition 65 Cocamide DEA Cases			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$10,000	PAYMENT: ATTORNEYS FEES \$28,000	PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 3 / 30 / 2016	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE ZIP CA 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
2 The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
3 Van Nuys, CA 91406
Telephone: (818) 809-2199
4 Facsimile: (424) 243-7689
5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, LLC

7 LEWITT HACKMAN SHAPIRO MARSHALL & HARLAN
Stephen T. Holzer, Esq. (SBN 075461)
8 16633 Ventura Boulevard, 11th Floor
9 Encino, CA 91436
Telephone: (818) 907-3299
10 Facsimile: (818) 981-4764
11 Email: sholzer@lewitthackman.com

12 Attorneys for Defendant MIXED CHICKS LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF ALAMEDA

16 Coordination Proceeding
17 Special Title (Rule 3.350)

18 PROPOSITION 65 DEA CASES

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO: 4765
)
) [*Shefa LMV, LLC Farouk Systems, Inc., et al.*,
) Los Angeles County Superior Court No.
) BC579191]
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO MIXED CHICKS**
)
) Judge: Hon. George C. Hernandez, Jr.
)
) Original Action filed: April 17, 2015
)
)
)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, LLC, a California limited liability company (“Shefa”) and Mixed Chicks LLC, a California limited liability company (“Settling Defendant”).

1.2 Shefa and Settling Defendant are referred to collectively as the “Parties,” and individually as a “Party.”

1.3 The Settling Defendant has manufactured, distributed, licensed and/or sold types of products identified on Exhibit A that contain Diethanolamine (“DEA”) in the State of California.

1.4 On the date identified on Exhibit A, Shefa served a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, et seq.) (“Notice”) to Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000.

1.5 The Notices allege violations of Proposition 65 with respect to the presence of DEA in the types of products identified in Exhibit A.

1.6 On the date(s) identified on Exhibit A, Shefa filed in Los Angeles County the Complaint applicable to the Settling Defendant (“Complaint”) for the Proposition 65 Action identified in Exhibit A; the Complaint was subsequently transferred to this Court.

1.7 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this Court has jurisdiction over the allegations of violations contained in the operative Complaint applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent Judgment.

1.8 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with

1 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law, or violation of law.

3 1.9 Except as to the matters resolved herein, nothing in this Consent Judgment shall
4 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
5 other legal proceeding.

6 1.10 This Consent Judgment is the product of negotiation and compromise and is
7 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
8 this action.

9 2. DEFINITIONS

10 2.1 “Covered Products” means the types of products identified on the Exhibit A for
11 Settling Defendant.

12 2.2 “Effective Date” means the date on which this Consent Judgment is entered by
13 the Court.

14 3. INJUNCTIVE RELIEF

15 3.1 **Reformulation of Covered Products.** As of the Effective Date, Settling
16 Defendant shall not knowingly manufacture, distribute, license, sell, or offer for sale any
17 Covered Product that contains DEA and that will be sold or offered for sale to California
18 consumers. For purposes of this Consent Judgment, a product “contains DEA” if DEA is an
19 intentionally added ingredient in the product and/or intentionally added part of the product
20 formulation.

21 3.2 **Specification to Suppliers.** Settling Defendant has previously issued
22 specifications to their suppliers of Covered Products requiring that the Covered Products not
23 contain any DEA. Settling Defendant shall instruct all future suppliers of the Covered Products
24 that the Covered Products may not contain DEA.

25 3.3 **Action Regarding Specific Products.** Before the Effective Date, Settling
26 Defendant had ceased selling and shipping the specific product identified as Section 3.3 Products
27
28

1 on Exhibit "A" which contained DEA in and into California. Settling Defendant shall not
2 knowingly sell or ship any Section 3.3 Products with DEA in or into California in the future.

3 3.4 On or before the Effective Date, Settling Defendant shall also cease shipping the
4 Section 3.3 Products to any of its stores and/or customers that resell the Section 3.3 Products in
5 California.

6 3.5 The requirements of this Section apply only to those Section 3.3 Products that
7 contain DEA.

8 4. ENFORCEMENT

9 4.1 Shefa may, by motion or application for an order to show cause before the
10 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent
11 Judgment.

12 4.2 Prior to bringing any motion or application to enforce the requirements of Section
13 3 above, Shefa shall provide each Settling Defendant with a Notice of Violation and proof of
14 purchase and a copy of any test results, which purportedly support the Notice of Violation.

15 4.3 The Parties shall then meet and confer regarding the basis for the anticipated
16 motion or application in an attempt to resolve it informally, including providing Settling
17 Defendant with a reasonable opportunity of at least sixty (60) days to cure any alleged violation.
18 Settling Defendant shall have no liability if Settling Defendant cures any alleged violation within
19 the cure period.

20 4.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
21 motion or application.

22 5. PAYMENTS

23 5.1 Within ten (10) business days of the Effective Date, Settling Defendant shall pay
24 the settlement payment identified on Exhibit A.

25 5.2 The total settlement amount for Settling Defendant shall be paid pursuant to the
26 instructions outlined in Exhibit A.

27
28

1 5.3 The funds paid by Settling Defendant shall be allocated, as identified in Exhibit
2 A, between the following categories:

3 5.4 **Civil Penalty.** A civil penalty pursuant to Health & Safety Code § 25249.7(b),
4 with such money to be apportioned by Shefa as identified on the Exhibit A for the Settling
5 Defendant in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the
6 State of California’s Office of Environmental Health Hazard Assessment).

7 5.5 **Attorney’s Fees and Costs.** A reimbursement of a portion of Shefa’s reasonable
8 attorney’s fees and costs, as reflected on Exhibit “A”.

9 **6. MODIFICATION**

10 6.1 **Written Consent.** This Consent Judgment may be modified from time to time by
11 express written agreement of the Parties with the approval of the Court, or by an order of this
12 Court upon motion and in accordance with law.

13 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
14 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
15 modify the Consent Judgment.

16 **7. CLAIMS COVERED AND RELEASED**

17 7.1 This Consent Judgment is a full, final, and binding resolution between (i) Shefa
18 on behalf of itself and the public interest; and (ii) Settling Defendant and its affiliates, its former
19 affiliates (“affiliate” means a person or entity who directly or indirectly owns or controls, is
20 owned or controlled by, or is under common ownership or control with, a Settling Defendant),
21 and each of Settling Defendant’s current and past owners, directors, officers, employees and
22 attorneys (“Defendant Releasees”), and each person and/or entity to whom any of them directly
23 or indirectly distribute or sell Covered Products, including but not limited to distributors,
24 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
25 (“Downstream Defendant Releasees”); of any violation of Proposition 65 that was or could have
26 been asserted in the Complaint against Settling Defendant, Defendant Releasees, and
27
28

1 Downstream Defendant Releasees, based on failure to warn about alleged exposure to DEA
2 contained in Covered Products that were sold by Settling Defendant prior to the Effective Date.

3 7.2 Compliance with the terms of this Consent Judgment by Settling Defendant and
4 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
5 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure
6 to warn about DEA in Covered Products manufactured, distributed, or sold by Settling
7 Defendant after the Effective Date.

8 7.3 Nothing in this Section 7 affects Shefa's right to commence or prosecute an
9 action under Proposition 65 against any person other than Settling Defendant, Defendant
10 Releasees, or Downstream Defendant Releasees.

11 8. NOTICE

12 8.1 When Shefa is entitled to receive any notice under this Consent Judgment, the
13 notice shall be sent by first class and electronic mail to:

14 Daniel N. Greenbaum
15 Law Office of Daniel N. Greenbaum
16 7120 Hayvenhurst Ave., Suite 320
17 Van Nuys CA 91406
dgreenbaum@greenbaumlawfirm.com

18 8.2 When Settling Defendant is entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to the person identified on
20 the Exhibit A for each Settling Defendant.

21 8.3 Any Party may modify the person and address to whom the notice is to be sent by
22 sending the other Party notice by first class and electronic mail.

23 9. COURT APPROVAL

24 9.1 This Consent Judgment shall become effective upon entry by the Court.

25 9.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
26 Settling Defendant shall support entry of this Consent Judgment.

1 9.3 Approval of this Consent Judgment by the Court constitutes dismissal, with
2 prejudice, of the Complaint, subject however to the rights and obligations specified in this
3 Consent Judgment.

4 9.4 If this Consent Judgment is not entered by the Court, it shall be of no force or
5 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
6 purpose other than to allow the Court to determine if there was a material breach of Section 9.2.

7 **10. ATTORNEYS' FEES**

8 10.1 Should Shefa prevail on any motion, application for an order to show cause, or
9 other proceeding to enforce a violation of this Consent Judgment, Shefa shall be entitled to its
10 reasonable attorneys' fees and costs incurred as a result of such motion or application.

11 10.2 Should Settling Defendant prevail on any motion, application for an order to
12 show cause or other proceeding, Settling Defendant shall be awarded its reasonable attorneys'
13 fees and costs against Shefa as a result of such motion or application.

14 10.3 Except as otherwise provided in this Consent Judgment, each Party shall bear its
15 own attorneys' fees and costs.

16 10.4 Nothing in this Section 10 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **11. OTHER TERMS**

19 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California.

21 11.2 This Consent Judgment shall apply to, be binding upon and inure to the benefit of
22 Shefa, Settling Defendant, and the successors or assigns of any of them; this Consent Judgment
23 shall further inure to the benefit of Defendant Releasees and Downstream Defendant Releasees.

24 11.3 This Consent Judgment contains the sole and entire agreement and understanding
25 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
27 and therein.

1 11.4 There are no warranties, representations, or other agreements between the Parties
2 except as expressly set forth herein.

3 11.5 No representations, oral or otherwise, express or implied, other than those
4 specifically referred to in this Consent Judgment have been made by any Party hereto.

5 11.6 No other agreements not specifically contained or referenced herein, oral or
6 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

7 11.7 No supplementation, modification, waiver, or termination of this Consent
8 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

9 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or
10 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
11 such waiver constitute a continuing waiver.

12 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights
13 Settling Defendant might have against any other person or entity.

14 11.10 This Court shall retain jurisdiction of this matter to implement or modify the
15 Consent Judgment.

16 11.11 The stipulations to this Consent Judgment may be executed in counterparts and
17 by means of facsimile or portable document format (pdf), which taken together shall be deemed
18 to constitute one document.

19 11.12 Each signatory to this Consent Judgment certifies that he or she is fully
20 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
21 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
22 that Party.

23 11.13 The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

25 11.14 This Consent Judgment was subject to revision and modification by the Parties
26 and has been accepted and approved as to its final form by all Parties.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11.15 Any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.

11.16 Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

AGREED TO:

Dated: 3/28/16

SHEFA LMV, LLC

By: 

Its: Managing Member

Dated: 3/25/16

MIXED CHICKS LLC

By: 

Its: Co-owner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11.15 Any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.

11.16 Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

AGREED TO:

Dated: SHEFA LMV, LLC
By: _____
Its: _____

Dated: MIXED CHICKS LLC
By: _____
Its: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC, and Mixed Chicks LLC, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: _____

Judge of the Superior Court

EXHIBIT A

1. Name of Settling Defendant: Mixed Chicks LLC
2. Name of Plaintiff: Shefa LMV, LLC
3. Person(s) to Receive Notices (Pursuant to Section 8.2):

LEWITT HACKMAN
Stephen T. Holzer, Esq.
16633 Ventura Boulevard, 11th Floor
Encino, CA 91436
Email: sholzer@lewitthackman.com
4. Date of 60-Day Notice of Violation (Pursuant to Section 1.4): August 11, 2015
5. Complaint Naming Settling Defendant (Pursuant to Section 1.6): *Shefa LMV, LLC Farouk Systems, Inc., et al.*, Los Angeles County Superior Court No. BC579191
 - a. Date Complaint Filed: April 17, 2015
6. Covered Products Applicable to Defendant (Pursuant to Sections 1.2, 1.3, 1.5, 2.1, 3.1, 3.2, 3.3, 3.4, 7.1 7.2):
x Shampoo(s)
7. Defendant's Section 3.3 Product(s) (Pursuant to Sections 3.3.1, 3.3.2, and 3.3.3):

Shampoo; UPC: 184560000028
TSA travel pack; UPC: 184560000233
HIS MIX shampoo 8.5 oz; UPC: 184560000110
Quad Pack; UPC: 184560000226
Shampoo 10oz; UPC: 184560000028
SHAMPOO 33oz/Liter; UPC: 184560000073
2oz. Shampoo; UPC: 184560000240
Trial and travel pack; UPC: 184560000219
8. Defendant's Settlement Payment and Allocation (Pursuant to Section 5.1):

Total Settlement Payment: \$38,000.00
Civil Penalty (payable to Shefa LMV, LLC): \$10,000.00
Payment in Lieu of Civil Penalty (PILP): \$ N/A
Shefa Fees and Costs (payable to the Law Office of Daniel N. Greenbaum): \$28,000.00

Checks payable to "Shefa LMV, LLC" or the "Law Office of Daniel N. Greenbaum" shall be delivered to counsel for Shefa as set forth in Section 8.1.